No. 80-5116

In the Supreme Court of the United States

OCTOBER TERM, 1980

DANE LAMAR JENKINS, PETITIONER

v.

LOU BREWER, WARDEN, RESPONDENT

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 25, 1980.
CERTIORARI GRANTED NOVEMBER 10, 1980.

INDEX

	Page
Chronological List of Relevant Docket Entries	1
Plaintiff's Complaint, filed May 29, 1979	2
List of Plaintiff's Personal Property When Transferred from Menard to Stateville	7
Affidavit of Missing Property	9
Stateville Institutional Inquiry Board Report, Heard April 19, 1979	11
Defendants' Motion to Dismiss or for Summary Judgment, filed August 5, 1979	13
Illinois Department of Corrections, Administrative Regulations, Section 845, Grievance Procedures for Residents, (Exhibit A to Defendant's Motion to Dismiss)	16
Plaintiffs' Motion for Leave to Amend and Supplement Plaintiff's Original Complaint filed August 20, 1979	20
Memorandum opinion and Order of District Court, filed October 24, 1979	25
Order of United States Court of Appeals for the Seventh Circuit filed June 20, 1980	27
Order of the Supreme Court of the United States Granting Motion for Leave to Proceed in forma pauperis and Granting Petition for Writ of Certiorari	29

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

(79 C 2188)

IN DANE LAMAR JENKINS

v.

LOU BREWER

Date	Item
5-29-79	Complaint received
5-29-79	Petition for leave to proceed *in forma pauperis* and supporting affidavit filed
6-5-79	Grant of leave for plaintiff to file and proceed *in forma pauperis*
8-7-79	Defendant's Motion to Dismiss or for Summary Judgment with Supporting Memorandum filed
8-22-79	Plaintiff's motion for leave to amend and supplement plaintiff's original complaint filed
9-10-79	Plaintiff's motion in opposition to defendant's motion to dismiss with supporting memorandum of law filed
10-25-79	Judgment entered by district court dated 10-24-79
10-25-79	Memorandum opinion and order entered by district court dated 10-24-79
10-29-80	Plaintiff's motion for appointment of counsel filed
11-14-79	Plaintiff's notice of appeal from order enter 10-24-79, motion for leave to appeal in forma pauperis, motion for leave to proceed in forma pauperis filed
11-20-79	Grant of leave to appeal *in forma pauperis*
6-20-80	Judgment entered by Court of Appeals

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 79 C 2188

Judge Decker

DANE LAMAR JENKINS, PLAINTIFF

vs.

WARDEN LOU BREWER,
DEPARTMENT OF CORRECTIONS, DEFENDANT

COMPLAINT UNDER THE CIVIL RIGHTS ACT,
TITLE 42, SECTION 1983 U.S.C.

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

NO.

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiffs: Dane Lamar Jenkins
Defendants: Warden Lou Brewer

2. Court (if federal court, name the district; if state court, name the county):

3. Docket number:

4. Name of judge to whom case was assigned:

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

6. Approximate date of filing lawsuit:

7. Approximate date of disposition:

II. Place of Present Confinement: P.O. Box 112, Joliet, Illinois 60434

A. Is there a prisoner grievance procedure in this institution?

YES.

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

YES.

C. If your answer is YES:

1. What steps did you take?

I informed the grievance committee about my property that the officers took during the shake down lockup.

2. What was the result?

I was told to show them a property list that I had in my possession, after showing the list, I was inform to file to the court of claims. I notified the grievance committee regarding my personal property that was confiscated by officers of this institution during the shake down lock up at stateville correctional center.

Prior to the incident I was required by the grievance committee to show a property

list of the valuable taken. I then was requested by the grievance committee to filed to the court of claims.

D. If your answer is NO, explain why not:

III. Parties

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of plaintiff: Dane Lamar Jenkins #C72233

Address: P.O. Box 112, Joliet, Ill. 60434

(In item B below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use item C for the names, positions, and places of employment of any additional defendants.)

B. Defendant Lou Brewer, Warden is employed as WARDEN at STATEVILLE CORRECTION CENTER

C. Additional Defendants: Department of Correction

IV. Statement of Claim

State here as briefly as possible the *facts* of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheet if necessary.)

On february 2, 1979 I was transferred from menard to stateville correctional center. When I enter stateville correctional center, a shake down was in process I was advised that certain property would be deen controband and would be taken away from me. after the shake down, property valued at over 600.00 dollars was missing from my cell, taken out of my cell by tact unit officers of stateville correctional center, who were conducting the search on the day in question. I was not in my cell of anywhere around when my personal property was taken out of my cell. I was later informed that personal property that was taken out of residents cell would be mailed home at state expense. Prior to the shake down, I send in the mal (postal service) 74 packs of cigarettes to my family, but my family never received the packages. included in this personal mail were photographs, legal mail, that to this date were not send home or mail out, from the institution. I was informed by my family that certain personal property was never received by them that the institution alledge that they had mail to my family at state expense. I was advised by the institution to file a grievance regarding the matter of my personal property, which was filed by myself on april 1979, with negative results. (*see affidavit attached*)

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Want the persons responsible (Lou Brewer, Department of correction) to reinverse me for personal property that was taken from me illegally approx. $600.00 dollars, and for damages suffered as a cause of personal property being taken from me illegally the amount of $10,000. dollars.

Signed this APRIL day of 29, 1979.

Dane Lamar Jenkins C-72233
(Signature of plaintiff or plaintiffs)

VERIFICATION

State of ————————)

County of ————————)

————————————, being first duly sworn, under oath, says: that he is the plaintiff in this action and knows the content of the above complaint; that it is true of his own knowledge, except as to those matters that are stated in it on his information and belief, and as to those matters he believes them to be true.

Dane Lamar Jenkins
(Signature of affiant-plaintiff)

Subscribed and sworn to before me this 21st day of May, 1979.

————————————

(Notary Public or other person authorized by law to administer an oath)

EXHIBIT (C)

This is a list of the personal property of inmate Dane Jenkins No. C-72233, who was transferred to Stateville Correctional Center On February 2, 1979. Personal Property must be taken to the Clothing House before 1:00 p.m. on this date: February 1, 1979.

* Angel Skin Lotion	___ Law Books--Personal	___ Text Book--Soft Covers
* Ash Trays, Commissary	___ Lead Pencils	___ Tobacco
___ Ball Point Pens	1 Legal Paper, Comm--Bond	___ Towels, Commissary
* Belts, Commissary	1 Legal Paper, Comm--Onionskin	___ Tooth-paste
* Bugler--Cans	1 Legal Documents	* Tooth-brushes
* Cards, Assorted	1 Letters, Personal	* Tooth-powder
* Candy Bars	1 Letters, Official	___ Tweezers
* Canned Food	___ Looseleaf Notebooks	___ Undershirts, Commissary
___ Can Openers	___ Matches, Book	___ Vicks Salve
* Chess Sets	___ Mechanical Pencils	___ Wash Cloths, Commissary
* Checker Sets	___ Music Books	*
* Chess & Checker Boards	1 Nail Clippers	*
* Chewing Tobacco	___ Paint Brushes	*
___ Court Transcripts	___ Painting Boards	
* Cookies	___ Paints Oil	
___ Combs	___ Paint Thinner	
* Cigarettes	* Paints, Water Colors	
___ Cigars	* Photo Albums Commissary	
___ Crayons	___ Photographs, Personal	
___ Dentures ☐ Upper ☐ Lower	___ Pipe Tobacco	
___ Deodorant Stikcs, Commissary	___ Playing Cards	
___ Dictionary	___ Shoes, Commissary, Dress	
1 Erasers	___ Shorts, Jockey, Commissary	
* Eyeglasses & Cases	___ Shorts, Boxer, Commissary	
* Fountain Pens	___ Socks, Commissary	
* Classes & Cups--Plastic	___ Soap Dishes, Commissary	
* Handkerchiefs, Commissary	___ Soap Bars, Commissary	
___ Hair Brushes	___ Sweatshirts, Commissary	
___ Hair Grease	___ Talcum Powder, Commissary	
___ Hair Oil	* Tee Shirts, Commissary	
___ House Slippers	___ Text Books--Hard Covers	

* _____
INMATE

* _____
Checking Officer

cc: Inmate [*Illegible.]
File

[List of Plaintiff's Personal Property When Transferred from Menard to Stateville]

FORM 497
PRINTED AT MENARD

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

AFFIDAVIT

I, Dane Lamar Jenkins, #C-72233, state the following is true in fact and is approximately what was taken from me in the lockdown at the Stateville Correctional Center, March 19, 1979, the date in question.

Legal Correspondence
Personal Correspondence
Numerous Motions
Two Transcripts
Post-Conviction Petition
Pictures
168 Packages of Cigarettes ($75.50)
1 Timex Watch ($79.00)
1 Pair Reptile Shoes ($162.00)
1 Blue Jean Suit ($39.00)
1 Commissary Shirt ($13.00)
1 Pair Socks ($1.50)
1 Pair Nylon Underwear ($4.00)
1 Cross and Chain ($13.50)
1 Blk & White TV, Panasonic, Blk & Yl. Case ($100.00)
4 Rugs ($24.00)
1 Blanket ($4.00)
1 Blue Jean Jacket ($21.00)
1 Blue Jean Pants ($18.00)
2 Nylon Undershits ($4.00)
2 Body Powder ($3.76)
4 Cocoa Butter ($8.00)
2 Face Towels ($4.00)
1 Stinger (.69)
13 Ink Pens
2 Shaving Powder ($1.20)
6 Shampoo ($9.00)
3 Hair Conditioner ($3.79)

PREVIOUS PAGE WAS BLANK

2 Bottles Noxzema ($2.99)
2 Nail Clippers ($1.38)
29 Write Outs Envelopes ($4.64)
2 Spools Thread (commissary) ($.80)
2 Shower Shoes ($6.00)
1 lb & ½ Coffee ($7.00)
1 Headphones ($29.00)
1 Sweatshirt ($4.98)
6 Tubes Clearisol ($10.00)
4 Angel Skin Lotion ($6.76)
10 Greeting Cards ($10.00)
7 Deodorant Sticks ($10.50)
1 Dictionary ($9.75)
1 Plastic Glass ($1.79)
3 Hair Brushes ($7.47)
5 Hair Grease ($13.94)
2 Hair Oil ($2.78)
3 Law Books ($45.00)
1 Ream Legal Paper Bond. ($3.50)
1 Ream Legal Paper Onionskin ($4.00)
1 Photo Albumn ($4.00)
33 Bars Soap ($14.85)
8 Text Books ($18.00)
8 Towels ($32.00)
4 Tubes Toothpaste ($5.80)
2 Toothbrushes ($1.38)

Affiant
/s/ Dane Lamar Jenkins
DANE LAMAR JENKINS
Reg. No. C-72233
Box 112
Joliet, Illinois 60434

SUBSCRIBED and SWORN TO Before me this — day of ————, 1980.

_____

Notary Public

STATEVILLE CORRECTIONAL CENTER
INSTITUTIONAL INQUIRY BOARD

Cell: E-456

TO: Warden

FROM: The Institutional Inquiry Board:

RE: *GRIEVANCE*:

GRIEVANT: Resident Jenkins—NO. C 72233

DATE THE GRIEVANCE WAS RECEIVED: N/A

DATE THE BOARD CONVENED TO HEAR THE GRIEVANCE: 4-19-79

HEARING:

This resident's grievance was personally interviewed by the Board. His Master Record File was reviewed. All of the information forwarded to the Board concerning the issue was carefully examined. He requests that his grievance be investigated and remedial action taken.

This resident states he has tried to resolve this grievance through the other avenue available to him at this facility, and the Inquiry Board accepts jurisdiction of this issue.

NATURE OF THE GRIEVANCE:

The issue being grieved by this Resident is: PERSONAL PROPERTY LOSS: Photographs, legal mail and 74 packages of cigarettes.

The above items were sent through the mail on March 16, 1979, through the mail office to Denise Jones in Chicago. He removed stamps from pre-stamped envelopes and attached them to the large legal envelope containing the cigarettes and gave them to Lt. Lyles.

FINDINGS:

—— The Board finds that this Respondent's grievance has no substance.

The basis for this finding is: Lt. Lyles was contacted and indicates that he has no knowledge of the package described. Mail office has no record of package being received or sent. No shakedown record from cell. The committed is able to verify that 168 packages of cigarettes were sent to S.C.C. from Menard in February.

RECOMMENDATION:

—— The Institutional Inquiry Board finds that: The package in question can not be verified as having left the cellhouse or being in existence. Resident may file in Court of Claims.

is/is not being complied with—and recommends that XXXXXXX/no redress be granted.

Redress Granted: NONE.

—— I concur —— I do not concur ——————
WARDEN

Copies To: Adj. Comm. Captain
Assign. Comm. Captain
Shift Captains Office
Record Office
Business Office

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 79 C 2188

DANE LAMAR JENKINS, PLAINTIFF

vs.

LOU BREWER, WARDEN DEPARTMENT OF CORRECTIONS, DEFENDANT

MOTION TO DISMISS OR FOR SUMMARY JUDGMENT WITH SUPPORTING MEMORANDUM

Now come the defendants Lou Brewer and the Illinois Department of Corrections, by their attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, and respectfully move this Court to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted or to grant summary judgment in their favor pursuant to Federal Rule of Civil Procedure 56.

In support of this motion defendants submit the following memorandum of law:

I. INTRODUCTION

Plaintiff, an inmate of the Stateville Correctional Center, Joliet, Illinois, seeks compensatory damages of $600.00 and punitive damages of $10,000.00 against defendants for the illegal taking of various items of personal property. The following exhibit is attached: Exhibit "A", photocopy of Administrative Rule 845 of the Illinois Department of Corrections.

II. THE DEPARTMENT OF CORRECTIONS IS NOT A PROPER DEFENDANT UNDER THE PROVISIONS OF THE CIVIL RIGHTS ACT.

The Department of Corrections should be dismissed as a defendant because it is not a person within the meaning of 42 U.S.C. sec. 1983. *Monroe* v. *Pape*, 365 U.S. 167, 81 S.Ct. 473 (1961); *Fitzgerald* v. *Pateo Memorial Hospital*, 523 F.2d 716 (7th Cir. 1975).

III. DEFENDANT BREWER CANNOT BE HELD LIABLE UNDER THE THEORY OF RESPONDEAT SUPERIOR.

Where, as here, monetary damages are sought, the doctrine of respondeat superior is not applicable. *Adams* v. *Pate*, 445 F.2d 105 (7th Cir. 1971). A showing of personal involvement of the defendant is required, and no showing has been made in the instant case.

IV. PLAINTIFF HAS FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES

A state prisoner, alleging deprivation without due process, of tangible items of personal property of no great monetary value, should be required to utilize readily available prison grievance procedures before resorting to federal civil rights litigation. *Secret* v. *Brierton*, 584 F. 2d 823 (7th Cir. 1978). The attached Administrative Regulations of the Department of Corrections, as well as plaintiff's complaint establish that he has failed to exhaust his available state remedies in the instant case.

Plaintiff's complaint filed with the Institutional Inquiry Board was denied April 19, 1979. Although Rule H, I and J of Administrative Regulations allow for appeal to the Director of the Department of Corrections, plaintiff failed to take any further action. As such, his failure to exhaust his administrative remedies should bar his federal civil rights action.

CONCLUSION

WHEREFORE, defendants move this Court to dismiss the complaint or, in the alternative to grant summary judgment in their favor.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General of Illinois

By: /s/ Stuart H. Shiffman
STUART H. SHIFFMAN
Assistant Attorney General
500 South Second Street
Springfield, Il 62706
(217) 782-1090

EXHIBIT "A"

ADMINISTRATIVE REGULATIONS

[SEAL]

STATE OF ILLINOIS
DEPARTMENT OF CORRECTIONS
ADULT DIVISION

SUBJECT:

Grievance Procedures for Residents

I. POLICY OF DEPARTMENT: To provide an opportunity for residents to air and seek resolution to complaints, problems and grievance which they have not been able to resolve through other avenues available at the institution or facility. Such a grievance procedure ensures the involvement of local and departmental administrators with individual residents' problems and ensures that all residents are treated in an equitable manner.

II. EXPLANATION:

A. As a matter of policy, the Chief Administrative Officer of each Adult Division institution or facility shall install locked mailboxes in all cellhouses, dormitories and residential units into which residents may place written complaints and grievances designated for the Chief Administrative Officer or the Chairman of the Institutional Inquiry Board. All communications placed in these boxes by residents are to be collected daily and routed directly to the addressees.

B. Each Chief Administrative Officer shall appoint three employees to serve on the Institutional Inquiry Board to attempt to resolve problems, complaints and grievances that residents have been unable to resolve through normal channels. One of these employees shall be designated as Chairman of the Inquiry Board. The Chief Administrative Officer shall also appoint several alternate mem-

bers who may serve in the absence of a regularly-appointed Board member. At least one member of every such Inquiry Board shall be a superior officer of lieutenant rank or above, and at least one member shall be a Program Services staff member.

C. No person directly responsible for the condition or action being grieved or who has been a member of the Adjustment Committee which heard a Resident Information Report based on the same set of facts out of which the incident being grieved arose may sit on the Inquiry Board that hears that particular case.

D. The Institutional Inquiry Board shall meet at least weekly, providing one or more problems, complaints, or grievances have been filed with the Chairman of the Board.

E. A resident must have an opportunity to appear before the Institutional Inquiry Board and the Board shall have the right to summon any other witnesses—residents or staff—it deems appropriate.

F. The Institutional Inquiry Board shall file a written report regarding its findings and recommendations with the Chief Administrative Officer within 10 working days after the complaint is received by the Chairman of the Inquiry Board.

G. The Chief Administrative Officer or his designee shall, after evaluating the Inquiry Board's report, advise the resident in writing as to what action, if any, he has taken or intends to take within five calendar days after receiving the Board's report. Copies of the resident's letter to the Board, copies of the Board's report to the Chief Administrative Officer, and copies of the Chief Administrative Officer's response to the resident shall be maintained.

H. If, after receiving the official response from the Chief Administrative Officer, the resident still feels that the problem, complaint or grievance has not been resolved to his/her satisfaction, he/she may appeal in writing to the Director of Corrections.

I. The Director of Corrections and/or his designee will review all such complaints, problems or grievances submitted. If, after reviewing all the reports from the Institutional Inquiry Board and the local administration, the Director feels that the case is without merit, he will so advise the resident in writing.

J. If the Director is of the opinion that the case has merit or that further investigation of the complaint, problem or grievance is in order, he will refer the matter to the Administrative Review Board.

K. A three-member Administrative Review Board shall be appointed by the Director, and at least one member of the board shall be an individual not employed by the agency.

L. The Administrative Review Board will meet as frequently as necessary and may schedule hearings at Adult Division institutions. When such hearings are scheduled, the board shall have the authority to call witnesses before it—residents and staff.

M. The Administrative Review Board shall file with the Director of Corrections a written report which shall contain the board's findings and recommendations.

N. The Director will make a final determination and so advise the resident in writing.

O. Residents of Adult Division institutions and facilities must be informed of these procedures in writing by the Chief Administrative Officer.

P. Under no circumstances may any disciplinary action be taken against a resident for using the procedures established herein.

Q. When recommendations relative to the revocation of good conduct credits are rendered and concurred with by the Chief Administrative Officer, and the amount of time recommended for revocation exceeds 30 days in a 12-month period—effective February 1, 1978—an automatic review of those actions will be undertaken directly by the Administrative Review Board.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 79 C 2188

DANE LAMAR JENKINS, PLAINTIFF

vs.

LOU BREWER, Individually and Officially
GAYLE FRANZEN, Indiv. and Officially
GEORGE MAY, Indiv. and Officially
E. MAXWELL, Indiv. and Officially,
DEFENDANTS.

MOTION FOR LEAVE TO AMEND AND SUPPLEMENT PLAINTIFF'S COMPLAINT.

Presiding Judge: DECKER

MOTION FOR LEAVE TO AMEND AND SUPPLEMENT PLAINTIFF'S ORIGINAL COMPLAINT

Now comes, Dane Lamar Jenkins, petitioner herein, who respectfully request permission to Amend and Supplement his original complaint.

In accords with Rule 15(a), (c)2 and (d) of the Federal Rules of Civil Procedure, which set forth in its provision, that before a party may amend his original complaint after a responsive pleading, he must request permission by leave of Court to so amend. And, only when justice so requires will permission be granted.

In accords with Rule 19(a) of the Federal Rules of Civil Procedure, Plaintiff seek permission to join Defendants Gayle Franzen, George May and E. Maxwell, as the Rule so allow, and by leave of Court.

In keeping with Rules 15 and 19, Plaintiff, by joining the additional Defendants and clarifying his allegations against each Defendant, he seeks to reflect the true nature of his complaint.

Claim I. Plaintiff's original Complaint was filed in this cause on May 29, 1979. Plaintiff alleged that during the declared State of Emergency, at Stateville Correctional Center, personal property valued at approximately $600.00 dollars was illegally confiscated from him by John Doe officers acting under orders issued by Defendants Lou Brewer, Gayle M. Franzen and George May. (See, original Complaint and Affidavit setting forth confiscated items.)

Claim II. Lou Brewer, at the time of Plaintiff's original Complaint, was the acting Warden and Chief Administrative Officer of the Stateville Corr. Center. And as such, Brewer was legally responsible for the welfare, safety and security of the Residents therein. And, Brewer was likewise responsible for the overall operations within the Stateville Institution on February 24, 1979. By enforcing the memorandum directive issued by Defendant Gayle Franzen, and by issuing direct orders to that effect, Brewer did enter into a conspiracy with named Defendants for the expressed purpose of violating Plaintiff's Constitutional Rights as set forth in the Bill of Rights and the Fifth and Fourteenth Amendments.

Claim III. Gayle Franzen is the Director in charge of the Illinois Department of Corrections. And as such, Franzen is legally responsible for the overall operations and administration of each institution under its jurisdiction; including the Statesville Corr. Center; whereat, he acting in collusion with others, planned and implemented a State of Emergency and subsequent lock-down, search and confiscation of Plaintiff's personal property as setout in his original complaint; said actions were initiated on February 24, 1979.

Claim IV. George May, at the time of Plaintiff's original Complaint, was the Administrative Assistant to the Warden of Stateville. And as such, May was legally responsible for the welfare, safety and security of the Residents and their personal property during the shakedown on February 24, 1979. Defendant May was also directly

in charge of the shakedown procedures conducted by John Doe officers. Defendant May while acting in said capacity did, in collusion with John Doe officers, acted to violate Plaintiff's rights to due process and equal protection of the law, by confiscating the articles as setout in Plaintiff's original complaint.

Claim V. E. Maxwell is the Personal Property Officer-In-Charge, and acting in said capacity, he is legally responsible for the care of Plaintiff's personal property after its confiscation. Maxwell was legally responsible for issuing property permits, sending confiscated property home, or returning said property to Plaintiff, but Defendant Maxwell has fail to act on any of the above alternatives; in violation of Plaintiff's Fifth and Fourteenth Amendment rights.

Claim VI. Plaintiff claims that the memorandum of February 24, 1979 did not adequately inform him of the consequences of the lockdown, or detail in any manner, what exactly was required of him to protect his personal property; and failed to describe the items of personal property that would be considered contraband.

Claim VII. Plaintiff claims that the Defendants through their actions and the acts of their agents, have denied him the benefits of Due Process and Equal Protection of the laws as setforth in the United States Constitution.

Claim VIII. Plaintiff claims that the confiscation of personal property items from his cell was arbitrarily and capriciously done and the Defendants failed to regard the requirements of the Administrative Rules of Regulations governing shakedown procedures; which require that a slip identifying the items taken; the officers name that conducted the shakedown and where the confiscated items would be found.

Claim IX. Plaintiff claims that John Do officials failed to issue him a Rule Violation Report so that he would be properly informed of any pending charges; or, reasons for said confiscation of his personal property, in

violation of the Administrative Rules of Regulations and his right to Due Process and Equal Protection of the law.

Claim X. Plaintiff claims that the named Defendants fail to properly instruct the John Doe officers conducting the shakedown as to what would constitute contraband, and as such, no standard criteria was established or promulgated to inform or protect his rights as setforth in the Administrative Rules of Regulations and the United States Constitution.

Claim XI. Plaintiff claims that Defendant E. Maxwell had failed to issue a permit for his personal property, and had knowledge to this effect, and as such is liable for the loss of damage of said items during the shakedown. And, that Defendant Maxwell acting in his official capacity as Personal Property Officer, has withheld from Plaintiff his personal property confiscation as a result of the February 24, 1979 shakedown.

RELIEF

Relief I. Plaintiff ask this Court to review his alleges and upon a finding of probable cause, grant the relief sought; charge the named Defendants with the cost of court, and compensation to the Plaintiff for the loss of his personal property in monetary awards.

Relief II. Plaintiff seek monetary awards for redress of the violation of his Civil and Constitutional Rights as the Court deems fit and proper.

Relief III. Plaintiff seek the amount of $10,000 dollars from each Defendant, Lou Brewer, Gayle M. Franzen, George May and E. Maxwell for compensatory damages.

/s/ Dane Lamar Jenkins
Plaintiff-Petitioner

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

AFFIDAVIT

I, Dane Lamar Jenkins, petitioner herein being first duly sworn upon oath, deposes and avers that the foregoing Motion is true and correct in substance and in fact.

Subscribed and Sworn to Before Me This Sixteenth Day of Aug., 1979.

/s/ Dane Lamar Jenkins
Plaintiff-Petitioner

/s/ [Illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 79 C 2188

DANE LAMAR JENKINS, PLAINTIFF

vs.

LOU BREWER, Warden, DEFENDANT.

MEMORANDUM OPINION AND ORDER

Dane Lamar Jenkins, acting pro se, has brought this action under 42 U.S.C. § 1983 alleging that certain items of his personal property were taken from him in violation of the due process clause of the United States Constitution. Plaintiff is a prisoner in the Stateville Correctional Center, and his property was allegedly taken by prison officials during a "shake down" at the prison, under a declared state of emergency. Defendants have moved to dismiss for failure to state a claim upon which relief may be granted, or for summary judgment.

Defendants allege in support of their motion that the Department of Corrections should be dismissed as a defendant, that the doctrine of respondeat superior is not applicable to this case, and that plaintiff has failed to exhaust his administrative remedies as required by the Seventh Circuit in *Secret* v. *Brierton*, 584 F.2d 823 (7th Cir. 1978). In view of the result reached on this last question, it is unnecessary to decide the first two.

Plaintiff did take his complaint to the prison grievance committee, but after it was denied, he failed to utilize the available appeal to the Director of the Department of Corrections, as provided in the Department of Corrections regulations section 845(H). Plaintiff claims that

exhaustion in this case would have been a futile act, citing *Houghton* v. *Shafer*, 392 U.S. 639 (1968). However, in that case, an appeal was deemed futile because the appeal would have been to the Attorney General, who had already said the prison rules had been correctly applied in that case. *Id.* at 640.

Secret, on the other hand, directly controls this case. Exhaustion of administrative remedies is required in "prisoner § 1983 cases which allege deprivation without due process of law of tangible items of personal property of no great monetary value." 584 F.2d at 829. Administrative procedures, to be considered adequate:

> "must be capable of providing the remedy sought by the plaintiff. They must be capable of providing that remedy within a reasonable time so as not to delay unduly the plaintiff's right to file his complaint in federal court. Finally, they must not be so inherently unfair that utilization of them would be futile." *Id.* at 831.

In view of the facts that the appeal procedure at issue here is the very same one expressly approved by the Court of Appeals in *Secret*, *id.* at 832, and that petitioner has put forward no reasons why it should be considered "inherently unfair," this court cannot say that such an appeal would have been futile.

Plaintiff's complaint is dismissed for failure to exhaust administrative remedies.

ENTER:

/s/ Bernard M. Decker
United States District Judge

Dated: October 24, 1979

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

(ARGUED MAY 28, 1980)

June 20, 1980

UNPUBLISHED ORDER
NOT TO BE CITED
PER CIRCUIT RULE 36

Before

Hon. WILLIAM J. BAUER, Circuit Judge
Hon. JOHN F. KILKENNY, Senior Circuit Judge *
Hon. RICHARD D. CUDAHY, Circuit Judge

No. 79-2437

DANE LAMAR JENKINS, PLAINTIFF-APPELLANT

vs.

WARDEN LOU BREWER, Department of Corrections,
DEFENDANT-APPELLEE

Appeal from the United States District Court
for the Northern District of Illinois
Eastern Division

No. 79 C 2188

Bernard M. Decker, Judge

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* The Hon. John F. Kilkenny, Senior Circuit Judge of the Ninth Circuit Court of Appeals, is sitting by designation.

ORDER

Plaintiff-appellant Dane Lamar Jenkins appeals an order dismissing his complaint brought under 42 U.S.C. § 1983. Plaintiff alleged that certain property valued at approximately $600 was taken from him without due process of law during a prison "shakedown."

Having examined the record, addressed the briefs, and heard oral argument on behalf of the parties, we agree with the district court that the plaintiff failed to exhaust his administrative remedies as required by *Secret* v. *Brierton*, 584 F.2d 823 (7th Cir. 1978). Accordingly, for the reasons stated in Judge Decker's attached Memorandum Opinion and Order of October 24, 1979, which we adopt as the decision of this Court, the judgment of the district court is affirmed.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 80-5116

DANE LAMAR JENKINS, PETITIONER

v.

LOU BREWER, ETC.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 10, 1980

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